

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-731 of 2022

[Nurullah Dost Muhammad .....v..... VIIIth Additional District Judge  
Karachi South & others]

Date of Hearing : 15.03.2023  
Petitioner through : Mr. Ahmed Nawaz Osmani, Advocate.  
Respondents through : Ms. Zahrah Sehr Vayani, Advocate for  
respondent No.2 & 3.

## ORDER

**Zulfiqar Ahmad Khan, J:-** This petition assails the concurrent findings of the learned trial Court dated 31.03.2021 as well as First Appellate Court dated 19.07.2022.

2. Crux of the matter is that petitioner (father) married with respondent No.2 (mother) on 04.01.1993 and out of said wedlock no issue was born, thereafter, the couple mutually adopted the respondent No.3 (baby Mahnoor). As the time went by, the father became jobless, thereafter, mother filed a divorce case in Family Court Bromley, London which case was decided in a way that mother admittedly received a sum of Pound Sterling 520,259 as a Clean Break Divorce announced by the Court in Bromley. Copy of the judgment of the Family Court at Bromley is available at page 37. Petitioner's counsel states that having received Pound Sterling 520,259 neither wife nor any dependent (baby Mahnoor) would be eligible for any future maintenance or compensation. Learned counsel further stated that such view is also reflected from the letter sent to father by mother's attorney dated 23.02.2017 available at page 61.

3. It appears that mother moved to Pakistan where she filed a suit for maintenance which remained ex parte and was decided in a way

that the father was made liable to pay a sum of Rs.100,000/- per month for the maintenance of minor (baby Mahnoor). Petitioner's counsel assertion is that wrong address of the petitioner was provided by mother, therefore, father could not be served notwithstanding that he was resident of United Kingdom in that time, however, when he came to know about these proceedings, he filed an appeal which was dismissed as time barred. Petitioner counsel's contentions are also that having paid the huge sum of Pound Sterling 520,259 (roughly over Rupees One Hundred and Seventy Five Million) which was aimed a Clean Break of the parties, it envisaged that parties will not contact each other again except with regard to the visitation etc. but the financial liability of father was fully discharged, therefore, the judgment & decree were obtained by way of fraud and misrepresentation of facts.

4. To the contrary, learned counsel for the respondent submitted that Bromley Court's Judgment was only in relation of the settlement between the husband and wife and with regard to the payment of maintenance of the minor adopted daughter (baby Mahnoor) under the United Kingdom laws it continued to remain the responsibility of the father and she has placed reliance on different international statutes by filing a separate statement.

5. Heard the parties at length. Both sides seem to have a plausible case. But this being a constitutional petition where disputed questions of facts cannot be decided and the appropriate forum for such redressal is that of the Family Court where the parties could produce their evidence, and since the Family Court is the appropriate fact finding authority mandated with this obligation, it to frame

issues, record evidence of the parties and pass the judgment & decree afresh, therefore, in the present circumstances, the matter is remanded back to the learned Family Judge XXI South Karachi to be decided afresh (de novo) and after framing of issues and leading evidence of contesting parties pass an appropriate Judgment & issue decree in accordance with law within a period of three months. It is expected that the no party will take any unnecessary adjournment and proceed with the matter expeditiously. In the given circumstances, earlier Judgments & Decree of the trial as well as Appellate Court impugned here are hereby set aside.

Karachi  
Dated:15.03.2023

JUDGE

Aadil Arab.